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BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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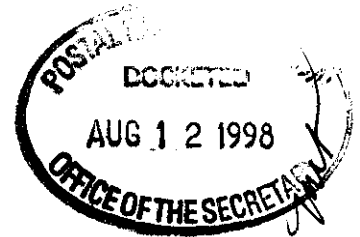
Docket No. MC98-1

ANSWER OF ACCUDOCs L.L.C.
TO
POSTAL SERVICE'S MOTION FOR EXPEDITION AND WAIVER

Service of documents in this proceeding should be made on each of the following:

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Dated: August , 1998



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**ANSWER OF ACCUDOCs L.L.C.
TO
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AccuDocs L.L.C., a major print-and-mailing company, offers its objections to the Postal Service's Motion for Expedition and Waiver.

SUMMARY

Although the Commission favors allowing the Postal Service to inaugurate legitimate new services without excessive delay, the Service's current proposal presents significant difficulties. "[I]n a case where it is apparent [as here] that introduction of the Postal Service's proposed new service may affect competition in an existing market, the Commission must perform its longstanding 'obligation to consider competition issues..., and to attempt to promote competition so far as consistent with regulatory requirements.'" (See MC97-5 Op., p. __, quoting MC78-3 Op., p. 51.)

In addition, the Postal Service has invoked a questionable procedural framework for launching its new proposal. The Commission's rules contemplate that the Postal Service can test new offerings through *either* a market test (as part of a request for permanent classification change) *or* an experimental service. But the Postal Service has tried to stitch together *both* procedures, proposing a market test followed by

experimental service, without any request for permanent classification change. That could postpone full Commission scrutiny until competitors are harmed irreparably.

DISCUSSION

A. Under Commission Precedents, the Service's Proposal Must Be Scrutinized For Its Effect Upon Competitors In the Private Sector

The Service's current proposal is a sequel to E-Com,¹ with overtones of the Provisional Packaging Service Case. The Postal Service intends to place itself in direct competition with numerous mail shops and print-and-mail businesses. As the Commission observed earlier this year: "There can be no serious doubt that the United States Postal Service enjoys certain institutional advantages that no private competitor—large or small—can share. (*Provisional Packaging Service*, Dkt. MC97-5, p. __.) Consequently, the Service's advantages "are a question the Commission has to consider carefully" (*Id.* at __). And "the Commission will...prevent the existence or perception of a distortion of fair competition through the introduction of any cross-subsidy from monopoly services" (*Id.* at __).

Although *Provisional Packaging Service* was decided under the provisional service rule (39 CFR Subpart J) that contains an explicit provision regarding services that do not harm competitors, that is a difference without a distinction. In the first E-COM case, the Commission recognized:

A long series of cases teaches that when a regulatory agency is instructed by its governing legislation to fix rates, issue licenses or certificates, or

¹ The newly-proposed service is unquestionably a sequel to E-COM. In *Board of Governors of the U.S. Postal Service v. PRC*, 654 F.2d 108, 109 (D.C. Cir. 1981), the Court observed that "E-COM'...[is] an acronym for Electronic Computer Originated Mail," a description that applies equally to the current Computer Online Service proposal.

take other regulatory actions as required by the public interest, it must consider competition as part of that general criterion. (*Electronic Mail Classification Proposal*, 1978, Dkt. No. MC78-3, p. 54)

In the second E-COM proceeding, the Commission reaffirmed this principle and its applicability to this Commission. (*E-Com Rate and Classification Changes*, Dkt. No. R83-1, p. 13.) In addition, the Commission's experimental service rules contain an express commitment that the Commission will consider competitive factors (39 CFR §3001.67(b)(2)).

As the Commission said, it must examine competition questions "carefully." The Postal Service's proposed hurry-up schedule could make it impossible for the Commission to give competitors time to present information enabling such a careful examination.

B. This Third Attempt To Have The Postal Service Compete With Private Enterprise Warrants Extra Careful Scrutiny

It is no coincidence that the Service's current proposal parallels the *E-Com* and *Provisional Packaging Service* proposals to compete with established businesses in the private sector. As Commissioner LeBlanc said in his dissent in the latter case: "I cannot ignore the Postal Service's other aggressive efforts to swell the ranks of its 'customers,' and the temptation to piggyback marketing of its packaging services on pre-existing programs may prove to be irresistible." Perhaps the time has come for the Commission to consider whether to "balance the minor potential revenue benefits that may accrue to the Postal Service from introducing its [competitive] service against the prospect of devastating harm to...private competitors...."

C. The Service's Proposed Amalgamation Of the Market Test And Experimental Service Rules Is Improper

The Commission should also question whether the Postal Service's format for its new service is procedurally viable. Nothing in the Commission's Rules of Practice and Procedure envisions that a market test can be followed by a period of experimental service, without any request for permanent classification change.

On the contrary, the Commission's Rules appear to establish market tests and experimental service as separate, mutually exclusive procedures. Under the market test rules, the Service's request for a market test is to be "*in addition* to its request for a *permanent* change in mail classification pursuant to section 3623...." (39 CFR §3001.162. Italics supplied.)² In contrast, the Rules contemplate that experimental services be limited to very special situations outside the normal Section 3612 procedures for classification cases (39 CFR §3001.67(b), with the Commission screening requests for their "duration" (39 CFR §3001.67(b)(4), "magnitude" (39 CFR §3001.67(b)(2), and "effect on...persons or firms offering services competitive with or alternative to the service offerings of the Postal Service" (*Id.*).

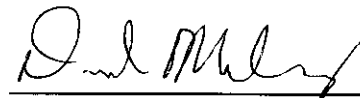
The Postal Service seeks a waiver that would enable it to prosecute its market test without filing a request for a permanent classification change. But the Service's attempt to stitch together the market test and experimental service procedures ignores the regulatory plan that these two procedures be alternatives. If the Service succeeds in its plan, full-fledged Commission scrutiny of its proposed service under Section 3623

² Accord 39 CFR §3001.166(a) (In cases where a market test is put into effect, the Service "may move for suspension of the proceeding in which its request for a *permanent change* in mail classification is to be considered") and §3001.166(b) (During the pendency of a market test, or following completion of a market test, the Service "may move to revise or withdraw its request for a *permanent change*" in mail classification) (Italics supplied).

would be postponed for five years, long after injury to private-sector competitors could be irreparable.

For these reasons, the Commission should not grant the Postal Service's Motion for Expedition and Waiver.

Respectfully submitted,



for AccuDocs L.L.C.

August , 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document, by First-Class Mail, upon the United States Postal Service, the Office of Consumer Advocate, and other participants listed of record.


Jeffery Plummer

August , 1998